

DOCKET FILE COPY  
ORIGINAL

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

FCC MAIL SECTION

FCC 94-120

JUN 3 4 00 PM '94

DISTANCE BY

In the Matter of )

Review of the Commission's )  
Rules Governing the Low Power )  
Television Service )

MM Docket No. 93-114 ✓

**FIRST REPORT AND ORDER**

Adopted: May 19, 1994

Released: June 2, 1994

By the Commission:

**Introduction**

1. On April 22, 1993, the Commission released its Notice of Proposed Rule Making in MM Docket No. 93-114, 8 FCC Rcd 2770 (1993). In the Notice, the Commission proposed to amend the rules and policies governing the low power television (LPTV) service, which includes LPTV stations and television translator stations. Specifically, we proposed to modify our current standard for acceptance of applications and to expand our waiver policy regarding terrain shielding. We also proposed to permit LPTV operators to use four-letter call signs rather than the current five-character call signs consisting of letters and numbers. These proposals raised little disagreement among commenters and are adopted in this First Report and Order. In addition, the Notice proposed to narrow the definition of what constitutes a major LPTV station modification. That issue generated significantly more diverse comment and requires further consideration. It will be resolved at a later date so as not to delay implementation of the changes we adopt herein.

2. The Commission established the LPTV service as a means of increasing diversity in television programming and station ownership. The Commission intended the service to provide opportunities for first local television outlets in smaller cities and towns, as well as to provide service to unserved audience-communities within the larger cities. After only twelve years since its creation, the LPTV service is more than meeting its expectations. Today 1400 LPTV stations serve diverse audiences in more than 750 communities and in all 50 states. These communities range in population from the hundreds to the millions. The hallmarks of the LPTV service are TV "localism" and specialized "niche" programming. Many LPTV stations air local news and public affairs programs and significant amounts of other locally produced programming. LPTV stations serve the needs and interests of many different ethnic communities, often airing programming in foreign languages. Specialized audiences of LPTV stations have included children, the elderly, students, tourists, farmers and boaters.

3. The LPTV service also has contributed to increased diversity in broadcast station ownership. LPTV station licensees include schools, colleges, churches, community groups, newspaper publishers and radio and TV broadcasters. The service has provided substantial first-time ownership opportunities for small businesses and members of minority groups. Small businesses also have benefitted from advertising over local LPTV stations because of the more affordable advertising rates and the ability to target advertising to specialized audiences.

#### Application Acceptance Standards

4. In the Notice, the Commission noted that the volume of LPTV applications has decreased and the quality of those submissions has improved as a result of the strict standard requiring that an LPTV application be "complete and sufficient" (i.e., "letter perfect") at the close of an LPTV filing window.<sup>1</sup> We pointed out that currently, applications that are not letter perfect are returned, forcing applicants to wait until the Commission opens a subsequent filing window to correct their submissions.<sup>2</sup> The Notice concluded that the strict standard has achieved its purpose of encouraging applicants to submit complete and carefully prepared applications, so as to alleviate the LPTV application backlog with which the Commission was faced. We therefore proposed that applications be judged on a "substantially complete" basis similar to that used in processing full-power television applications, whereby applications are considered acceptable if they are not patently defective. As an alternative to the substantially complete standard, the Notice suggested a mid-level acceptance standard requiring the application to be more than substantially complete but less than letter perfect.<sup>3</sup>

5. The commenters in this proceeding, who include LPTV licensees, consulting engineers, other broadcasters, law firms and educational institutions, overwhelmingly support adoption of a relaxed standard for acceptance of applications.<sup>4</sup> They agree with the Notice that the letter perfect standard is no longer necessary due to the decreased volume of LPTV applications. They also assert that the letter perfect requirement unfairly forces LPTV applicants filing defective applications to wait to refile in the next filing window, which

---

<sup>1</sup> Applications for LPTV construction permits and major changes to existing LPTV facilities are accepted during finite filing windows announced by the Commission.

<sup>2</sup> See 47 C.F.R. § 73.3564(a)(2).

<sup>3</sup> Notice at 2770-71.

<sup>4</sup> See, e.g., CBS Comments at 2-4; Channel Eleven Comments at 1; CBA Comments at 3-4; du Treil, Lundin & Rackley Comments at 2-3; Findlay Comments at 3; NTA Comments at 2-3; San Bernardino Comments at 3-4; Smith and Powstenko Comments at 2-5; Byron W. St. Clair Comments at 2; Third Coast Comments at 1-2; University of California Comments at 1-2; Viking Comments at 1; W43AG Comments at 1; WFXV Comments at 2.

sometimes does not open for a year. Further, commenters assert that a relaxed standard is more appropriate in light of the limited resources of most LPTV applicants.

6. Of the commenters advocating relaxation of the current standard, only three favor the mid-level alternative. Cohen, Dippell and Everist submits that failure of an applicant to comply with the Commission's interference rules with respect to full-power TV stations should result in dismissal of the application without an opportunity for amendment.<sup>5</sup> du Treil, Lundin & Rackley would extend this treatment to applicants whose proposals fail to comply with the interference rules with respect to LPTV and TV translator stations and previously filed applications.<sup>6</sup> Hammett & Edison contends that the substantially complete approach would encourage sloppily prepared and essentially speculative applications.<sup>7</sup> In opposition, the Community Broadcasters Association (CBA) contends that resolution of challenges to the mid-level standard would likely be more time consuming than processing the few applications that would not pass a "mid-level" test, but would pass a "substantially complete" test. CBA further notes that because a substantially complete standard exists in other mass media contexts, case law exists to interpret it.<sup>8</sup> San Bernardino also opposes the mid-level approach, arguing that creating a list of incurable defects could lead to a waste of staff time and effort.<sup>9</sup>

7. Only one commenter opposes substantial relaxation of our LPTV application acceptance standards. May & Dunne submits that while a letter perfect standard is more costly to applicants than a relaxed standard, it makes it much more likely that applicants have the commitment and resources to build the station once the application is granted. It contends that our proposed change in processing standards would benefit few applicants and may lead to re-creation of the previous backlog.<sup>10</sup>

---

<sup>5</sup> Cohen, Dippell and Everest Comments at 2-3.

<sup>6</sup> du Treil, Lundin & Rackley Comments at 2-3.

<sup>7</sup> Hammett & Edison Comments at 1. Hammett & Edison identifies a number of specific discrepancies that it would consider fatal defects.

<sup>8</sup> CBA Comments at 3-4.

<sup>9</sup> San Bernardino Comments at 3-4.

<sup>10</sup> May & Dunne Comments at 1-4; May & Dunne Reply at 3-5. May & Dunne suggests a minor relaxation of the present standard equivalent to the "hard look" standard formerly applied to FM applications. See FM Applications, 58 RR 2d 166 (1985). May & Dunne suggests that the Commission also give applicants a 30-day period from the date the application is noted as tendered for filing to file amendments as of right to correct any errors affecting the acceptability of the application.

8. We will revise our LPTV application acceptance standards and adopt a "substantially complete" test. We agree with the overwhelming majority of commenters that the strict acceptance standard is no longer necessary in light of the reduced number of LPTV applications being filed with the Commission and in light of the improved quality of those applications. We are persuaded by the comments and by our processing experience to favor the substantially complete standard over a mid-level standard. We do not believe that the substantially complete standard will lead to a lessening of the overall quality of LPTV application submissions, nor significantly delay the authorization of LPTV service. Conversely, this standard will enable the authorization of more stations for each filing window. We believe that this modification of our application acceptance standards will greatly benefit LPTV applicants, many of whom have limited resources. We note that while we will give applicants an opportunity to cure defects in otherwise substantially complete applications, the corrected application must adhere to the Commission's rules and policies. For instance, if an amendment to an application eliminates predicted interference to one station but at the same time introduces interference to another station, the amended application will not be accepted and will be returned. Similarly, an application that is not substantially complete, that is not submitted with the proper fee, or that is not timely filed cannot be cured via subsequent amendment.

9. The Commission has developed a body of case law over the years governing broadcast applications that were subject to the substantially complete standard.<sup>11</sup> From these decisions, certain criteria were established, even though each case turned on the particular facts involved. In the cases where applications failed the test, it was found that many sections of the applications were deficient to a significant degree or were omitted entirely, so as to lack sufficient information regarding the adequacy of the proposals vis-a-vis the public

---

<sup>11</sup> See generally, Miami STV, Inc., 42 RR 2d 1056 (Broadcast Bureau 1978); KALE, Inc., 56 FCC 2d 1033 (1975); Trustees of Dartmouth College, 29 RR 2d 59 (1973); Central Florida Enterprises, Inc., 22 FCC 2d 260 (1970). Prior to the adoption of the stricter LPTV and FM standards, all broadcast applications were processed under the substantially complete standard.

interest.<sup>12</sup> Amendments were allowed to correct errors, unless the application, judged as a whole, was "so patently violative of the rules as to make its processing a futile gesture."<sup>13</sup>

10. Following these precedents, the staff will consider applications as not substantially complete, and therefore subject to dismissal as patently defective, if they omit all of or large portions of several sections of the application. This test reflects the criteria applied by the Commission in prior cases decided under this standard, while recognizing the differences in the current LPTV application form (FCC Form 346). Additionally, in accordance with longstanding Commission policy, an application found to have been filed without reasonable assurance of site availability will not be considered substantially complete and will be dismissed as patently defective.<sup>14</sup> Keeping in mind that each case will be

---

<sup>12</sup> See National Business Network, 82 FCC 2d 220 (1978). For instance, in Henry M. Leshner, 67 FCC 2d 278 (1977), an FM application lacked substantial portions of the legal and financial sections and almost all of the community ascertainment information. Characterizing the omissions as "glaring" and "numerous," the Commission stated that they impaired its ability to evaluate the applicant's qualifications under the public interest standard, and that conclusion was compelled by the cumulative impact of each uncompleted section. In Voice of Information, 27 FCC 2d 723 (1971), an FM application was judged on the basis of "degree of completeness" and rejected because it omitted the entire engineering and EEO sections and significant portions of the legal, financial and ascertainment sections. The Commission concluded that it lacked "sufficient information to reach many of the necessary determinations regarding the adequacy of the proposal . . ." *Id.* at 725. In George E. Oleson, 5 FCC 2d 58 (1966), recon. denied, 6 FCC 2d 5021 (1967), an AM application was "incomplete in many respects" because it lacked significant portions of the financial, ascertainment, program service, and engineering sections. In Ranococas Valley Broadcasting Co., Inc., 95 FCC 2d 429 (1983), an AM application lacked a proper signature, six of ten answers concerning parties to the proposal, and a financial certification. The Commission characterized the missing data as essential to a threshold showing, given their quantity and significance.

<sup>13</sup> K & L Communications, Inc., 70 FCC 2d 1987, 1989 (1979) (TV application found acceptable despite financial and minor EEO omissions); see also National Business Network, *supra*, note 12 (TV application acceptable despite defects in some financial information, ascertainment and description of STV proposal); Racine Telecasting Co., 51 RR 2d 1205 (1985) (TV application acceptable despite seven omissions in the engineering section); Communications Gaithersburg, Inc., 60 FCC 2d 537 (1976) (signature defect can be rectified); Anax Broadcasting, Inc., 87 FCC 2d 483 (1981) (TV application acceptable despite incomplete source of funds and contemplation of additional unknown limited partners); Galaxy Broadcasting, Inc., 46 RR 2d 1654 (Broadcast Bureau 1980) (TV application acceptable despite omissions in STV proposal and ascertainment surveys); Focus Broadcasting of the Monterey Peninsula, Inc., 49 RR 2d 1451 (Broadcast Bureau 1981) (TV application acceptable despite failure to document availability of funds); LDA Communications, Inc., 49 RR 2d 1290 (Broadcast Bureau 1981) (TV application acceptable despite omission of loan and equipment credit documentation).

<sup>14</sup> See 62 Broadcasting, Inc., 4 FCC Rcd 1768 (1989); see also South Florida Broadcasting Co., Inc., 99 FCC 2d 840, 842 (Rev. Bd. 1984) ("It is elemental that a prospective construction permittee must have, if little else, an antenna site, a technical keystone of the broadcasting operation").

different, our general purpose in adopting this standard, as urged by CBA, is to eliminate the present "booby traps that await even the most bona fide applicant under the letter perfect standard."<sup>15</sup> It has been the experience of the staff that very few LPTV applications are submitted to the Commission in a condition not meeting this substantial completeness test. The simplified format of the LPTV application form, which generally specifies the exact information to be submitted in boxes rather than in narrative exhibits, serves to guide applicants in successfully completing the form.

11. Accordingly, in keeping with the proposals advanced in the Notice, applicants filing substantially complete applications containing defects or omissions will be given an opportunity to cure the defects. If the defect prevents the staff from further processing the application, a deficiency letter will be issued and the applicant will have 30 days from the date of that letter to correct the defect. If the defect does not prevent processing, the staff will not send a deficiency letter until it completes pre-acceptance studies on the application or until a subsequent defect prevents further processing, at which time the applicant will be given 30 days to amend. Applicants will be given one opportunity to amend for each deficiency letter received. Applications revised to correct all defects identified by the staff and that do not introduce any new defects will then be listed as "Accepted for Filing" in a public notice, either in the form of a lottery announcement notice for mutually-exclusive applications or a "proposed grant list" for non-mutually-exclusive applications. Any amendment submitted to correct a defective application must be a minor amendment<sup>16</sup> and must otherwise be acceptable in all respects. The same policies and procedures that apply before the application is accepted for filing will govern correction of deficiencies identified in the post-acceptance stage. In order to prevent undue processing delays, we will enforce strictly the 30-day period.<sup>17</sup>

### Terrain Shielding

12. The Commission's present terrain shielding policy in the LPTV service provides that the Commission will waive its application acceptance standards for predicted interference when it is demonstrated that, due to the existence of intervening terrain, an applicant's proposed operation will not cause interference to another facility.<sup>18</sup> Consideration of waivers based on terrain shielding is currently limited to LPTV applications that are not mutually-

---

<sup>15</sup> CBA Reply at 3.

<sup>16</sup> See 47 C.F.R. § 73.3572(a).

<sup>17</sup> Extensions of time may be granted if the applicant is able to show good cause why it cannot file its amendment within the 30-day period.

<sup>18</sup> Commission Policy Regarding Terrain Shielding, 3 FCC Rcd 2664 (1988), recon. granted in part, 3 FCC Rcd 7105 (Terrain Shielding Policy Statement). See 47 C.F.R. §§ 74.705, 74.707 and 74.709 for LPTV application acceptance standards for interference protection.

exclusive with other applications submitted during a particular filing window. We proposed in the Notice to broaden the circumstances in which terrain shielding waivers can be used in the authorization of LPTV service. Because the volume of applications is now manageable, we stated that it was administratively feasible to expand the terrain waiver policy to include mutually-exclusive applications. In this regard, we proposed to consider an applicant's terrain shielding showing with respect to a protected broadcast facility, even if that application is mutually-exclusive with another timely filed LPTV application(s), allowing the application to be accepted for filing.

13. Further, the Notice proposed to permit applicants to consider terrain shielding as a basis for resolving situations of mutual exclusivity. Without consideration of terrain, proposed facilities in mutually-exclusive applications, by definition, are predicted to interfere with each other to the extent that not all of them can be granted. Under our proposal, applicants for nearby LPTV facilities using the same channel but separated by terrain obstructions could all be granted, without involvement in the Commission's random selection (i.e., lottery) process. Finally, the Notice proposed to take terrain shielding into account when applicants raise it for the first time in amendments responding to deficiency letters.<sup>19</sup>

14. No commenter opposes our proposals to expand our waiver policy regarding terrain shielding to mutually-exclusive applicants and to permit applicants to consider terrain shielding as a basis for resolving situations of mutual exclusivity. Commenters support these proposals as a practical approach to acceptance of applications that more realistically reflects a station's actual potential to interfere with another station.<sup>20</sup> A few commenters object to our proposal to take terrain shielding into account when applicants raise it for the first time in amendments responding to deficiency letters. du Treil, Lundin & Rackley and the University of California submit that any terrain shielding request should be included with the initial application.<sup>21</sup> The University of California contends that this will minimize the number of mutually exclusive LPTV applications. While May & Dunne would permit an applicant to submit a terrain shielding showing during a 30-day amendment period, it opposes the acceptance of terrain shielding showings submitted in response to a Commission action dismissing the application or otherwise raising issues concerning the technical representations in the application.<sup>22</sup> Some commenters also propose changes to our existing terrain shielding procedures.<sup>23</sup>

---

<sup>19</sup> Notice at 2772.

<sup>20</sup> See, e.g., CBA Comments at 4; NTA Comments at 3-4.

<sup>21</sup> du Treil, Lundin & Rackley Comments at 3; University of California Comments at 2.

<sup>22</sup> May & Dunne Comments at 7-10, 9 n.4.

<sup>23</sup> du Treil, Lundin & Rackley contends that if the National Bureau of Standards Technical Note 101 is used, the methods should be fully described in the application. du Treil, Lundin & Rackley

15. We will adopt the proposals advanced in the Notice regarding terrain shielding waivers. We believe that if intervening terrain prevents an LPTV applicant from interfering with other LPTV or full-power TV stations or other LPTV facilities proposed in pending applications, the applicant should be permitted to take that situation into account, regardless of whether the application is mutually exclusive with another LPTV application. The proposals we adopt in this proceeding do not affect the nature of applicants' terrain shielding waiver submissions, nor the manner in which the staff evaluates such submissions, as provided in the Commission's LPTV Terrain Shielding Policy Statement. LPTV applicants seeking terrain shielding waivers should continue to follow the existing criteria for demonstrating noninterference based on terrain considerations, i.e., submitting either detailed profiles of the terrain in pertinent directions toward the protected signal contours of potentially affected stations or letters of assent from the licensees of such stations, agreeing that terrain shielding would prevent interference but without surrendering the right to be protected against any actual interference. Also, mutually-exclusive applicants may now use either of these methods to demonstrate that their respective station proposals could co-exist without an interference conflict.<sup>24</sup> Further, while we strongly urge applicants to fully address applicable terrain shielding conditions at the initial application stage, we will accept a satisfactory terrain shielding showing for the first time in response to a deficiency letter. We believe that this will facilitate the initiation of new or modified LPTV station operations by

---

Comments at 3. Technical Note 101 is a publication of the National Bureau of Standards detailing an assortment of signal propagation methods and models suitable for use in differing terrain and other conditions. Hammett & Edison urges the Commission to give official notice to the Terrain Integrated Rough Earth Model (TIREM), arguing that it is superior to Technical Note 101. Hammett & Edison Comments at 11-12. Cohen, Dippell and Everist contends that the Commission should require a detailed terrain analysis with regard to interference situations concerning full-power TV stations, as opposed to the current policy of a limited terrain shielding study and a consent letter. It asserts that this would avoid any potential conflict in the future due to a change in the full-power station's ownership. Cohen, Dippell & Everist Comments at 3. Smith and Powstenko suggests that the Commission adopt a more exacting definition of the minimum showing required of applicants requesting terrain waivers. Smith and Powstenko Comments at 6-7. Also, MSTV/NAB would apparently limit the use of terrain shielding only between mutually-exclusive LPTV applicants. MSTV/NAB Comments at 2 n.3. In Commission Policy Regarding Terrain Shielding, 3 FCC Rcd 7105 (1988), we concluded that case-by-case evaluation of terrain shielding "affords the administrative flexibility to select from among available prediction models one that applies to the topographic features in each case." The existing flexible guidelines have worked well in practice and we see no need to revise them. Moreover, we believe that modifications to our current policy would be at odds with our aim in this proceeding, which is to streamline the LPTV application process. We decline, therefore, to pursue further in this proceeding these suggested modifications to our current LPTV terrain shielding policy.

<sup>24</sup> We reiterate that where two mutually-exclusive applicants choose to resolve the exclusivity by agreeing that interference between their two facilities would not be likely due to the existence of intervening terrain, the parties will be responsible for eliminating any interference that might occur, and the parties are expected to cooperate fully to that end. See Notice at 2772.



treating the omission of terrain shielding data like any other error in an otherwise substantially complete application and giving the applicant an opportunity to make appropriate corrections.

16. In adopting the LPTV terrain shielding proposals in the Notice, we are simply removing administrative barriers that were necessary when the LPTV Terrain Shielding Policy Statement was first established. Had the current LPTV application processing climate existed at that time, we would not have found it necessary to limit consideration of terrain shielding among LPTV applicants. In the more than five years since its adoption, our terrain policy has enabled the grant of more than 200 LPTV and TV translator stations that otherwise would not have been possible. The policy also has been successful in terms of interference protection. LPTV stations are not permitted to interfere with the regularly viewed signals and programs of full-power TV stations. We know of no instance in which the grant of a terrain shielding waiver in the LPTV service has resulted in interference to the reception of another broadcast facility. Thus, our broadening of eligible LPTV applicants for terrain shielding waivers should not increase the likelihood that LPTV stations will cause interference to the reception of full-power TV stations.

#### Call Signs

17. In the Notice, we proposed to amend our rules to permit LPTV stations to request four-letter call signs rather than the five-character alpha-numeric call signs that are currently assigned. We stated our belief that such a modification may be competitively beneficial to the LPTV industry and may reduce confusion to viewers, who are accustomed to four-letter call signs. We proposed to append a distinctive suffix such as "LP" to any LPTV four-letter call sign to avoid confusion with full-power television stations.<sup>25</sup>

18. The Notice presented two options for assigning four-letter call signs. Under the first option, as proposed by CBA, four-letter call signs would be permitted only for LPTV stations that meet certain threshold requirements, including a minimum number of hours of operation and a given amount of locally originated programming, as well as other requirements currently imposed on full-power stations such as the multiple ownership, children's programming, main studio and public file requirements. Alternatively, the second option would permit all LPTV stations to request four-letter call signs upon applying for a license. We stated our inclination to favor the second option.<sup>26</sup>

---

<sup>25</sup> Notice at 2774.

<sup>26</sup> Id.

19. No commenter opposes permitting LPTV stations to use four-letter call signs, and all parties specifying a preference prefer the second option.<sup>27</sup> Commenters contend that four-letter call signs will facilitate marketing and will be easier to include in ratings books and ratings surveys. They also argue that four-letter call signs will alleviate public confusion regarding the nature of LPTV stations; they submit that the current call signs can lead the public to mistake LPTV stations for amateur radio operations. In addition, W43AG and May & Dunne suggest that stations be required to originate programming before they can request a four-letter call sign.<sup>28</sup> This requirement would prevent TV translator operators from making such a request. The National Translator Association (NTA) submits that call signs are not a significant issue for TV translator operators, and notes that TV translator operators would prefer to have no identification requirement.<sup>29</sup>

20. Most commenters, primarily LPTV operators, oppose the adoption of an "LP" suffix as unnecessarily segregating LPTV stations from full-power television stations.<sup>30</sup> They analogize that licensees in different broadcast services use four-letter call signs without any suffix requirement. For example, they note, a Class A FM station is not designated any differently from a Class C FM station, nor do AM daytimers have to distinguish themselves from full-time AM stations. Some of these commenters suggest that if the Commission does require a suffix, the suffix should be "CT" (for "community television"), "TX" (as used in

---

<sup>27</sup> See, e.g., Channel Eleven Comments at 1; CBA Comments at 7-8, 8 n.10 (although CBA in its petition for rulemaking had proposed the first option, its comments on the Notice indicate that it would be amenable to the second option); Findlay Comments at 2-3; Hammett and Edison Comments at 12; May & Dunne Comments at 5-7; MSTV/NAB Comments at 8-10; MW TV Comments at 1-2; NTA Comments at 5-6; NSU Comments at 1; San Bernardino Comments at 10; Reporter-Times Comments at 1; Byron W. St.Clair Comments at 4-5; Third Coast Comments at 4-5; University of California Comments at 1; Venture Comments at 1-2; VideoIndiana Comments at 2-3; Viking Comments at 1; W43AG Comments at 3-5; WFXV Comments at 3.

<sup>28</sup> W43AG Comments at 4-5; May & Dunne Comments at 6-7.

<sup>29</sup> NTA Comments at 5-6.

<sup>30</sup> See, e.g., CBA Comments at 9; CBA Reply at 2-3; Findlay Comments at 2-3; NSU Comments at 1; Byron W. St.Clair Comments at 4-5; Third Coast Comments at 4; May & Dunne Reply at 1-3; University of California Comments at 1; Venture Comments at 1-2; W43AG Comments at 3-5; WFXV Comments at 3.

the FCC TV engineering database), or "TV."<sup>31</sup> Hammett & Edison and MSTV/NAB support use of an "LP" suffix.<sup>32</sup>

21. Another area in which some commenters differ with the Notice deals with when an LPTV station should be eligible to request a four-letter call sign. The Notice proposed to award four-letter call signs at the time the LPTV license is applied for rather than at the construction permit stage. CBA and Byron W. St. Clair believe that an LPTV operator should be permitted to request a four-letter call sign as soon as the construction permit is issued.<sup>33</sup> NTA similarly supports awarding a four-letter call sign before a station becomes operational.<sup>34</sup> These commenters contend that early assignment of a four-letter call sign will allow the LPTV station to more effectively market itself to the public.

22. All initial construction permits for LPTV stations will continue to be issued with a five-character alpha-numeric call sign. However, we will permit any LPTV station that so chooses to request a four-letter call sign, without threshold operating requirements, after receiving its construction permit.<sup>35</sup> We stated our belief in the Notice that only licensed LPTV stations should be able to apply for four-letter call signs because many LPTV construction permits never become operational.<sup>36</sup> We recognize commenters' concerns, however, that LPTV operators need to have four-letter call signs as early as possible to effectively market their stations to the public. CBA suggests that an LPTV station be permitted to apply for a four-letter call sign at any time after issuance of the initial construction permit if the request is accompanied by a certification that a firm equipment order has been placed or that physical construction is underway at the transmitter site.<sup>37</sup> We

---

<sup>31</sup> See, e.g., Findlay Comments at 2-3 ("CT"); Third Coast Comments at 4 ("TX"); University of California Comments at 1 ("TV"); W43AG Comments at 5 ("TV"). In addition, May & Dunne, Third Coast and WFXV suggest that the name of the LPTV service be changed to "Community Television." May & Dunne Reply at 1-3; Third Coast Comments at 4; WFXV Comments at 3. As we stated in the Notice, the proposal to rename the LPTV service, which was originally advanced by CBA, does not warrant further consideration at this time. See Notice at 2770 n.1.

<sup>32</sup> Hammett & Edison Comments at 12; MSTV/NAB Comments at 8-9.

<sup>33</sup> CBA Comments at 8-9; Byron W. St. Clair Comments at 4-5.

<sup>34</sup> NTA Comments at 5-6.

<sup>35</sup> All initial LPTV construction permits will be issued with a five-character LPTV call sign. TV translator stations appear to have no need for four-letter call signs and therefore will not be eligible to request them.

<sup>36</sup> Notice at 2774 n.24.

<sup>37</sup> See CBA Comments at 8-9. We note that while CBA proposes this alternative, it would prefer unrestricted assignment of four-letter call signs to permittees requesting them.

believe that this limited restriction is not unreasonable in that it will not unduly burden LPTV permittees and will promote efficient use of Commission resources. Accordingly, a permittee requesting a four-letter call sign must include with that request a certification that it has placed a firm equipment order, which includes a down payment for such major components as a transmitter or a transmitting antenna, that physical construction is underway at the transmitter site or that the station has been constructed. In addition, permittees, as well as LPTV licensees requesting a four-letter call sign, must also submit the drug certification statement required by Section 1.2002 of the Commission's Rules. By a later public notice, a schedule will be established by which licensees and permittees will be able to apply for four-letter call signs. Those stations in operation for the longest period of time will have the opportunity to apply first.<sup>38</sup>

23. All LPTV four-letter call signs will include a suffix of "-LP," (e.g., "WXYZ-LP"). We do not agree that the suffix will unduly prejudice LPTV stations, and we believe that such a suffix is necessary to distinguish LPTV stations from full-power television stations so as to guard against public confusion. The commenters' comparison of the relationship between LPTV and full-power stations to that of different types of stations in other broadcast services is inapposite. Different classes of FM stations are all regulated as part of the FM service, and different classes of AM stations are all regulated under the AM service. LPTV stations, however, are regulated as a distinct broadcast service from full-power television stations. As such, they are not constrained to follow rules applicable to full-power stations such as multiple ownership restrictions, children's programming rules, the prime time access rule, local public file requirements and main studio requirements. Moreover, they operate on a secondary, non-interference basis. We believe that the distinctive suffix "-LP" is more appropriate than "TV," "CT" or other suggestions because it best reflects the longstanding denomination of the service and would not introduce new and possibly confusing terminology.

24. As we proposed in the Notice, requests for four-letter call signs will be handled under the practices detailed in Section 73.3550 of the Commission's Rules.<sup>39</sup> An LPTV operator may not request a call sign used by another broadcast station unless the stations are

---

<sup>38</sup> There are now 1,400 licensed LPTV stations and an additional 1,300 outstanding LPTV construction permits, which represent a potentially large number of requests for modified call signs. Accordingly, we believe that a phased implementation of the new LPTV call sign policy is necessary to ensure expeditious handling of call sign requests and the avoidance of delays. A fair and flexible means of accomplishing this is first to accept requests from operators of licensed stations on the basis of years of operation. Once all station licensees have been afforded an opportunity to request a four-letter call sign, the opportunity will be extended to LPTV permittees. The certification requirement will effectively enable the Commission to award four-letter call signs to those permittees most likely to construct and operate their stations.

<sup>39</sup> Requests for modified call sign assignments can be made by letter to the Commission in accord with Section 73.3550.

commonly owned, or unless the LPTV operator has the other station's written consent. Also in keeping with the Notice, where a call sign is requested by more than one party, the first operator to file its request with the Commission will prevail. In the case of identical requests filed on the same day, the call letters will be assigned to the station with the longest continuous record of broadcasting operation under substantially unchanged ownership and control.<sup>40</sup> We also adopt the proposal of MSTV/NAB that a full-power television station will prevail in the situation where a full-power station and an LPTV station apply for the same call sign on the same day.<sup>41</sup> Similarly, an AM or FM radio station will prevail over an LPTV station applying for the same call sign on the same day.

## **ADMINISTRATIVE MATTERS**

### **Final Regulatory Flexibility Analysis**

25. Pursuant to the Regulatory Flexibility Act of 1980, the Commission has prepared a Final Regulatory Flexibility Analysis for this item as follows.

#### **I. Need for and Purpose of this Action:**

26. This action is taken to relax the Commission's standards regarding acceptance of applications for stations in the low power television (LPTV) service, and to permit LPTV stations to request four-letter call signs.

---

<sup>40</sup> See Notice at 2774.

<sup>41</sup> See MSTV/NAB Comments at 9-10. In addition, the University of California submits that an LPTV licensee should be permitted to use the same call sign for all of its LPTV stations. University of California Comments at 1. We decline to adopt this suggestion, as we believe it would cause undue confusion to the public, Commission staff and other interested parties.

Several parties raise other issues not addressed in the Notice. du Treil, Lundin & Rackley proposes that applicants be permitted to request a change in the offset of another existing authorized or proposed LPTV or translator station. du Treil, Lundin & Rackley Comments at 4. Hammett & Edison makes a number of suggestions regarding antenna azimuths, upgrading of existing LPTV or TV translator stations not operating on specified offsets, type acceptance, the definition of how to calculate the depression angle to the radio horizon, and distance and bearing calculations. Hammett & Edison Comments at 3, 7-11. San Bernardino requests that filing windows be set on a regular basis and that the Commission reiterate that LPTV service is secondary, and states its support for the Commission's determination not to increase LPTV and translator power limits. San Bernardino Comments at 11-13. The suggestions of Venture and Viking regarding mandatory cable carriage and retransmission consent are similarly not within the scope of this proceeding and will thus not be considered here. See Venture Comments at 2-4; Viking Comments at 1-2.

**II. Summary of Issues Raised by the Public Comments in Response to the Initial Regulatory Flexibility Analysis: None.**

**III. Significant Alternatives Considered and Rejected:**


27. The Commission considered a lesser relaxation of the application acceptance standards. The Commission also considered not allowing LPTV operators to apply for four-letter call signs until after they are licensed.

28. The Secretary shall send a copy of this Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act (Pub. L. No. 96-354, 94 Stat. 1164, 4 U.S.C. § 601, et seq. (1981)).

**ORDERING CLAUSE**

29. IT IS THEREFORE ORDERED that pursuant to the authority contained in Section 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), the Commission's policy changes set forth herein ARE ADOPTED, and Sections 73.3522, 73.3550, 73.3564, 73.3591, 74.780 and 74.783 of the Commission's Rules, 47 C.F.R. §§ 73.3522, 73.3550, 73.3564, 73.3591, 74.780 and 74.783, ARE AMENDED as set forth in Appendix B below. The revisions to Section 73.3564 and 73.3591 relieve existing restrictions. As such, they are exempt from the effective date requirements of the Administrative Procedure Act, 5 U.S.C. § 553(d)(1), and will become effective upon publication in the Federal Register. The revisions to Section 73.3522 will become effective 60 days after publication in the Federal Register. The revisions to Sections 73.3550, 74.780, 74.783 and to the Commission's terrain shielding policy in the LPTV service will become effective 60 days after they are published in the Federal Register and subject to approval by the Office of Management and Budget.

**FEDERAL COMMUNICATIONS COMMISSION**

  
William F. Caton  
Acting Secretary

**APPENDIX A**  
**List of Commenters**

**Initial Comments**

1. Association for Maximum Service Television, Inc. and the National Association of Broadcasters (jointly) (MSTV/NAB)
2. CBS, Inc.
3. Channel Eleven, Inc.
4. Cohen, Dippell and Everist, P.C.
5. Community Broadcasters Association (CBA)
6. du Treil, Lundin & Rackley, Inc.
7. Findlay Television Corporation
8. Hammett & Edison, Inc.
9. May & Dunne, Chartered
10. MW TV, Inc.
11. National Translator Association
12. Northeastern State University
13. Office of Special Districts, San Bernardino County, CA (San Bernardino)
14. Reporter-Times, Inc.
15. Smith and Powstenko
16. B.W. St. Clair
17. Third Coast Broadcasting, Inc.
18. University of California
19. Venture Technologies Group, Inc.
20. VideoIndiana, Inc.
21. Viking Communications, Inc.
22. W43AG, Hopkinsville, KY
23. WFXV-TV, Inc.

**Reply Comments**

1. Community Broadcasters Association
2. May & Dunne, Chartered

**Other Correspondence**

1. Sherwin Grossman

**APPENDIX B**  
**Rule Changes**

Parts 73 and 74 of Title 47 of the Code of Federal Regulations are amended as follows:

**PART 73 -- RADIO BROADCAST SERVICES**

1. The authority citation for Part 73 continues to read as follows:

AUTHORITY: 47 U.S.C. 154, 303, 334.

2. Section 73.3522 is amended by revising paragraph (a)(3) to read as follows:

**§ 73.3522 Amendment of applications.**

(a) \* \* \*

(3) Subject to the provisions of §§ 73.3525, 73.3572 and 73.3580, any application for a low power TV, TV translator or TV booster station may be amended as a matter of right during the application window filing period pursuant to § 73.3564(d). If it is determined that a low power TV, TV translator or TV booster application is substantially complete but contains some defect(s) or omission(s), a deficiency letter will be issued affording the applicant 30 days to correct the defect.

\* \* \* \* \*

3. Section 73.3550 is amended by revising paragraphs (b), (f), (h), (j) and (n), as follows:

**§ 73.3550 Requests for new or modified call sign assignments.**

\* \* \* \* \*

(b) No request for a new call sign assignment will be accepted from an applicant for a new station until the FCC has granted a construction permit. Failure by the permittee of a new station to request the assignment of a specific call sign within 30 days of grant of the construction permit will result in the FCC, on its own motion, assigning an appropriate call sign. All initial construction permits for low power TV stations will be issued with a five-character low power TV call sign.

\* \* \* \* \*



(f) Only four-letter call signs (plus an LP suffix or FM or TV suffixes, if used) will be assigned. However, subject to the other provisions of this section, a call sign of a station may be conformed to a commonly owned station holding a three-letter call sign assignment (plus FM, TV or LP suffixes, if used).

\* \* \* \* \*

(h) Call signs are assigned on a "first-come-first-served" basis. Receipt by the FCC of a request for an available call sign blocks the acceptance of competing requests until the first received request is processed to completion. In the case of requests for the same call sign being received on the same date at the FCC, the assignment (if otherwise grantable) will be made to the station having the longest continuous record of broadcasting operation under substantially unchanged ownership and control. However, involuntary and pro forma assignments will not be taken into account in determining priority. If a low-power TV operator and an AM, FM or full-power TV operator apply for the same call sign on the same date at the FCC, the AM, FM or full-power TV operator will prevail.

NOTE: The provisions of paragraph (h) of this section shall not apply to a licensee requesting a transfer to another frequency where the existing and new facilities serve substantially the same area (i.e., where at least one of the stations serves both communities of license).

\* \* \* \* \*

(j) The provisions of this section shall not apply to International broadcast stations, to stations authorized under Part 74 of the rules (except as provided in § 74.783 of this chapter), nor to FM or TV stations seeking to modify an existing call sign only to the extent of adding or deleting an "-FM" or "-TV" suffix. The latter additions and deletions may be effective upon notification to the Commission.

\* \* \* \* \*

(n) Where a requested call sign, without the "-FM," "-TV" or "-LP" suffix, would conform to the call sign of any other non-commonly owned station(s) operating in a different service, the applicant must obtain and submit with the application for the call sign the written consent of the licensee(s) of such stations.

4. Section 73.3564 is amended by revising the second sentence of introductory paragraph (a) and paragraph (a)(2) to read as follows:

**§ 73.3564 Acceptance of applications.**

(a) \* \* \* "Except for non-reserved band FM (except for Class D) applications, those found to be complete or substantially complete are accepted for filing and are given file numbers..." \* \* \*

\* \* \* \* \*

(2) The application must not omit more than 3 of the second tier items specified in appendix C, Report and Order, MM Docket No. 91-347, FCC 92-328, 7 FCC Rcd 5074 (1992); 57 Fed. Reg. 34,872 (August 7, 1992). Applications found not to meet minimum filing requirements will be returned to the applicant. Applications found to meet minimum filing requirements but that contain deficiencies in tender and/or acceptance information shall be given an opportunity for corrective amendment pursuant to § 73.3522. Applications found to be substantially complete and in accordance with the Commission's core legal and technical requirements will be accepted for filing. Applications with uncorrected tender and/or acceptance defects remaining after the opportunity for corrective amendment will be dismissed with no further opportunity for corrective amendment. In the case of low power TV, TV translator and TV booster applications, those found to be substantially complete will be listed on a Commission public notice as tendered for filing and given file numbers. Those that are not substantially complete will be returned to the applicant. If it is determined that a low power TV, TV translator or TV booster application is substantially complete but contains some defect(s) or omission(s), a deficiency letter will be issued affording the applicant 30 days to correct the defect. If the defect is not corrected within 30 days of the date on the deficiency letter, the application will be returned with no further opportunity to amend.

\* \* \* \* \*

5. Section 73.3591 is amended by revising paragraph (b) to read as follows:

**§ 73.3591 Grants without hearing.**

\* \* \* \* \*

(b) In making its determinations pursuant to the provisions of paragraph (a) of this section, the FCC will not consider any other application, or any application if amended so as to require a new file number, as being mutually exclusive or in conflict with the application under consideration unless such other application was substantially complete, and tendered for filing by:

\* \* \* \* \*

**Part 74 - Experimental, auxiliary, and special broadcast and other program distributional services**

6. The authority citation for Part 74 continues to read as follows:

**AUTHORITY:** Secs. 4, 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended; 47 U.S.C. 301, 303, 307.

7. Section 74.780 is amended by adding the reference "Section 73.3550 -- Requests for new or modified call sign assignments" after the reference to Section 73.3545 and before the reference to Section 73.3561.

8. Section 74.783 is amended by redesignating paragraph (e) as paragraph (f) and adding new paragraph (e) to read as follows:

**§ 74.783 Station identification.**

\* \* \* \* \*

(e) Low power TV permittees or licensees may request that they be assigned four-letter call signs in lieu of the five-character alpha-numeric call signs described in paragraph (d) of this section. Parties requesting four-letter call signs are to follow the procedures delineated in § 73.3550. Such four-letter call signs shall begin with K or W; stations west of the Mississippi River will be assigned an initial letter K and stations east of the Mississippi River will be assigned an initial letter W. The four-letter call sign will be followed by the suffix "-LP." A party holding a low power TV construction permit who requests a four-letter call sign must file with that request a certification that the station has been constructed, that physical construction is underway at the transmitter site or that a firm equipment order has been placed.

\* \* \* \* \*